

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

PROPOSED HEARING PROCEDURES
FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R9-2010-0082
ISSUED TO
OSCAR MOLINA PEREYRA
LINDA MICHELLE PEREYRA
BULLDOG CONCRETE PUMPING
VIOLATIONS OF CLEANUP AND ABATEMENT ORDER NO. R9-2008-0036

SCHEDULED FOR *December 8, 2010*

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

Background

The Assistant Executive Officer of the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) issued Administrative Civil Liability (ACL) Complaint No. R9-2010-0082 (Complaint) pursuant to Water Code section 13323 against Oscar Molina Pereyra, Linda Michelle Pereyra, individually and d.b.a. Bulldog Concrete Pumping (Dischargers) alleging that they violated Cleanup and Abatement Order No. R9-2008-0036. The Complaint proposes that administrative civil liability in the amount of \$329,091 be imposed as authorized by Water Code section 13350. Unless the Dischargers waive its right to a hearing and pay the proposed liability, a hearing will be held before the San Diego Water Board during its meeting of December 8, 2010, at the San Diego Water Board Office.

Purpose of Hearing

The purpose of the hearing is to receive relevant evidence and testimony regarding the proposed ACL Complaint. At the hearing, the San Diego Water Board will consider whether to adopt, modify, or reject the proposed assessment.

The public hearing on December 8, 2010, will commence as announced in our San Diego Water Board meeting agenda. The meeting will be held at the San Diego Water Board at 9174 Sky Park Court, San Diego, California. An agenda for the meeting will be issued at least ten days before the meeting and will be posted on the San Diego Water Board's web page at: www.waterboards.ca.gov/sandiego.

Hearing Procedures

The hearing will be conducted in accordance with this hearing procedure. This proposed draft version of the hearing procedure has been prepared by the Prosecution Team, and is subject to revision and approval by the San Diego Water Board's Advisory Team. A copy of the procedures governing an adjudicatory hearing before the San Diego Water Board may be found at Title 23 of the California Code of Regulations, section 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with section 648, subdivision (d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Title 23 of the California Code of Regulations (CCR), section 648(b), Chapter 5 of the Administrative Procedures Act (commencing with section 11500 of the Government Code) does not apply to adjudicatory hearings before the San Diego Water Board. This Notice provides additional requirements and deadlines related to the proceeding.

THE PROCEDURES AND DEADLINES HEREIN MAY BE AMENDED BY THE ADVISORY TEAM IN ITS DISCRETION. **ANY OBJECTIONS TO THE HEARING PROCEDURE MUST BE RECEIVED BY CATHERINE HAGAN, SENIOR STAFF COUNSEL, NO LATER THAN OCTOBER 11, 2010, OR THEY WILL BE WAIVED.** FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

Hearing Participation

Participants in this proceeding are designated as either "parties" or "interested persons." "Designated parties" to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. "Interested persons" may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Interested persons generally may not present evidence (e.g., photographs, eye-witness testimony, monitoring data). Both designated parties and interested persons may be asked to respond to clarifying questions from the San Diego Water Board, staff or others, at the discretion of the San Diego Water Board.

The following participants are hereby designated as parties in this proceeding:

1. San Diego Water Board Prosecution Staff
2. Oscar Molina Pereyra
3. Linda Michelle Pereyra
4. Bulldog Concrete Pumping

Requesting Designated Party Status

Persons who wish to participate in the hearing as a “designated party,” and not already listed above, shall request “designated party” status by submitting a request in writing (with copies to the existing “designated parties”) no later than 5 p.m. on **October 11, 2010**, to Catherine Hagan, Senior Staff Counsel, at the address set forth above. The request shall include an explanation of the basis for status as a “designated party” (e.g., how the issues to be addressed in the hearing and the potential actions by the San Diego Water Board affect the person), the information required of “designated parties” as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person’s interest. Any opposition to the request must be submitted by 5 p.m. on **October 14, 2010**. The parties will be notified by 5 p.m. on **October 19, 2010**, as to whether the request has been granted or denied.

Contacts

Advisory Staff

Catherine Hagan, Esq., Senior Staff Counsel, chagan@waterboards.ca.gov
David W. Gibson, Executive Officer, dgibson@waterboards.ca.gov
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9174 Sky Park Court, Suite 100
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Prosecution Staff

Eric Becker, P.E., Sr. Water Resource Control Engineer, ebecker@waterboards.ca.gov
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State Water Resources Control Board
Office of Enforcement
P.O. Box 100
Sacramento, California 95812

Discharger

Oscar Molina Pereyra
Linda Michelle Pereyra
Bulldog Concrete Pumping
9089 Avocado Court
Spring Valley, California 91977-3302

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the San Diego Water Board (Prosecution Staff) have been separated from those who will provide advice to the San Diego Water Board (Advisory Staff).

Ex Parte Communications

The designated parties and interested persons are forbidden from engaging in *ex parte* communications regarding this matter with members of the Advisory Staff or members of the San Diego Water Board. An *ex parte* contact is any written or verbal communication pertaining to the investigation, preparation, or prosecution of the ACL Complaint between a member of a designated party or interested party on the one hand, and a San Diego Water Board member or an Advisory Staff member on the other hand, unless the communication is copied to all other designated and interested parties (if written) or made at a proceeding open to all other parties and interested persons (if verbal). Communications regarding non-controversial procedural matters are not *ex parte* contacts and are not restricted. Communications among the designated and interested parties themselves are not *ex parte* contacts.

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have a combined twenty (20) minutes to present evidence, cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have three (3) minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received no later than seven days after all of the evidence has been received (**November 22, 2010**). Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the San Diego Water Board Chair (at the hearing) upon a showing that additional time is necessary.

Submission of Evidence and Policy Statements

The following information must be submitted in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the San Diego Water Board to consider. Evidence and exhibits already in the public files of the San Diego Water Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with Title 23, CCR, section 648.3.
2. All legal and technical arguments or analysis.

3. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.
5. (Dischargers only) If the Dischargers intend to argue an inability to pay the civil liability proposed in the Complaint (or an increased or decreased amount as may be imposed by the San Diego Water Board), Dischargers should submit supporting evidence as set forth in the "ACL Fact Sheet" under "Factors that must be considered by the Board."
6. (Dischargers only) If the Dischargers would like to propose a Supplemental Environmental Project (SEP) or Compliance Project (CP) in lieu of paying some or all of the civil liability in accordance with the State Board's Water Quality Enforcement Policy, Dischargers shall submit a detailed SEP or CP proposal including a specific implementation timetable.

The Prosecution Team shall submit two (2) hard copies of the information to Catherine Hagan, Senior Staff Counsel, so that it is received no later than 5 p.m. on **October 18, 2010**.

The remaining designated parties shall submit twenty (20) hard copies and one (1) electronic copy of the information to Catherine Hagan, Senior Staff Counsel, so that they are received no later than 5 p.m. on **November 1, 2010**.

In addition to the foregoing, each designated party shall send one (1) copy of the above information to each of the other designated parties by 5 p.m. on the deadline specified above.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to Catherine Hagan, Senior Staff Counsel, as early as possible, but they must be received by **November 8, 2010**, prior to the hearing. Interested persons do not need to submit written comments in order to speak at the hearing.

In accordance with Title 23, California Code of Regulations, section 648.4, the San Diego Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the San Diego Water Board may exclude evidence and testimony that is not submitted in accordance with this hearing procedure. Excluded evidence and testimony will not be considered by the San Diego Water Board and will not be included in the administrative record for this proceeding. PowerPoint and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. A copy of such material intended to be presented at the hearing must be submitted to the Advisory Team at or before the hearing¹ for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

Request for Pre-Hearing Conference

A designated party may request that a pre-hearing conference be held before the hearing in accordance with Water Code section 13228.15. A pre-hearing conference may address any of the matters described in subdivision (b) of Government Code section 11511.5. Requests must contain a description of the issues proposed to be discussed during that conference, and must be submitted to the Advisory Team, with a copy to all other designated parties, no later than 5 p.m. on **October 21, 2010**.

Evidentiary Objections

Any designated party objecting to written evidence or exhibits submitted by another designated party must submit a written objection so that it is received by 5 p.m. on **November 15, 2010**, to the Advisory Team with a copy to all other designated parties. The Advisory Team will notify the parties about further action to be taken on such objections and when that action will be taken.

Evidentiary Documents and File

The Complaint and related evidentiary documents are on file and may be inspected or copied at the San Diego Water Board office at 9174 Sky Park Court, Suite 100, San Diego, CA 92123. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the San Diego Water Board Chair. Many of these documents are also posted on-line at www.waterboards.ca.gov/sandiego. Although the web page is updated regularly, to assure access to the latest information, you may contact Catherine Hagan, Senior Staff Counsel.

Questions

Questions concerning this proceeding may be addressed to Catherine Hagan, Senior Staff Counsel.

¹ Each Regional Board may choose to require earlier submission of all visual aids by all parties. OE prefers early submission of visual aids, so that they have time to confirm that the aids do not go beyond the scope of previously-submitted evidence.

IMPORTANT DEADLINES

September 22, 2010: Prosecution Team issues ACL Complaint to Dischargers and Advisory Team, sends proposed Hearing Procedure to Discharger and Advisory Team, and publishes Public Notice.

October 11, 2010: Objections due on proposed Hearing Procedures. Deadline for submission of request for designated party status.

October 14, 2010: Advisory Team issues Hearing Procedure. Deadline for opposition to request for designated party status.

October 18, 2010: Prosecution Team's deadline for submission of all information required under "Evidence and Policy Statements," above.

October 19, 2010: Advisory Team issues decision on requests for designated party status, if any.

October 21, 2010: Dischargers' deadline for waiving right to hearing. All Designated Parties' deadline for submission of request for pre-hearing conference.

November 1, 2010: Remaining Designated Parties' Deadline for submission of all information required under "Evidence and Policy Statements," above.

November 8, 2010: Deadline for submission of written non-evidentiary policy statements by interested persons.

November 15, 2010: All Designated Parties' deadline for submission of rebuttal evidence (if any) and evidentiary objections.

November 22, 2010: Deadline for submittal of request for additional hearing time.

December 8, 2010: Hearing

PROPOSED

DAVID W. GIBSON
Executive Officer

Date